

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary has also determined that this emergency clearly poses such an immediate, serious harm that delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

### Specific Facts Showing the Need for Immediate Action

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms which cause tissue breakdown. Damaged fruit is generally unfit for human consumption. The fly can be artificially spread by movement of hosts which are infested with the fly.

An adult Oriental fruit fly has recently been trapped in the County of Sacramento. On September 21, 2007, a mature male Oriental fruit fly was taken from a trap in the Elk Grove area of Sacramento County. The detection of an adult Oriental fruit fly meet the State's and national and international standards that mandate intensive delimitation efforts to determine if an incipient infestation of the fly exists in the Elk Grove area of Sacramento County.

The Oriental fruit fly is a methyl eugenol attracted fruit fly. This amendment will provide authority for the State to perform specific detection, control and eradication activities against the Oriental fruit fly in Sacramento County. This authority includes, "The searching for all stages of the fly by visual inspection, the use of traps, or any other means." It is immediately necessary to perform

these activities within the Elk Grove area of Sacramento County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry and urban environment, if necessary, treatment activities against the fly would have to begin upon the detection of a second life stage of the fly within three miles and within one life cycle. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for an eradication response. The Food and Agriculture Organization of the United Nations has a similar international standard established. After the eradication trigger is met, treatments are to begin within 24-72 hours. However, "The searching for all stages of the fly by visual inspection, the use of traps, or any other means" must begin immediately to determine if there is an incipient infestation in Sacramento County. Therefore, it is necessary to amend Section 3591.12(a) on an emergency basis.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The Oriental fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

The proposed amendment of this eradication regulation will proclaim Sacramento County as an eradication area. The entire county of Sacramento is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established Oriental fruit fly infestation. Fruit which may have already been moved from the infested area to another portion of the county and flies which may have already

spread naturally from the infested area may have already resulted in small infestations outside the known infested area. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county should be established as an eradication area.

This regulation will provide authority for the State to perform control and eradication activities against Oriental fruit fly in Sacramento County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary to immediately begin treatment activities against the Oriental fruit fly. Therefore, it is necessary to amend this regulation as an emergency action.

#### Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5761, 5762, 5763 and 5764, Food and Agricultural Code.

#### Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests. The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest.

Existing law also obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests, and that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest (Food and Agricultural Code, Section 5761).

## Section 3591.2(a), Oriental Fruit Fly Eradication Area.

This amendment of Section 3591.2(a) will establish Sacramento County as an eradication area for the pest *Bactrocera dorsalis* (Oriental fruit fly). The effect of this amendment will be to provide authority for the State to perform control and eradication activities against Oriental fruit fly in Sacramento County to prevent spread of the fly to noninfested areas to protect California's agricultural industry.

### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts.

### Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.